

TRIAL TRANSCRIPT

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge

ANIBAL RODRIGUEZ, et al.,)
individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

VS.)

NO. 3:20-CV-04688 RS

GOOGLE LLC,)

Defendant.)

San Francisco, California
Wednesday, August 27, 2025

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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CSR No. 7445, Official United States Reporter

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1 A. It's free and unlimited. It offers behavioral and
2 attribution analytics. It's easy to get started and to extend.
3 And customers own their data.

4 Q. I want to ask you why -- why is that last bullet point a
5 strength?

6 A. This differentiates Google Analytics from some of its
7 competitors. So, for example, Facebook Analytics, at the time,
8 they owned the data from their analytics product that their
9 developers used.

10 Q. And Google does not own the data that the app developers
11 send to Google?

12 A. No, it doesn't.

13 Q. How do you know that?

14 A. That's in our terms of service.

15 Q. Let's look at the weaknesses slide.

16 So these are competitive weaknesses of analytics in the
17 market?

18 A. Yes.

19 Q. So I want to ask you about the second bullet point on
20 Analytics for Firebase weaknesses. Can you just read that to
21 the jury?

22 A. [As read]:

23 "Facebook's identity graph is more readily
24 usable than ours."

25 Q. Can you just explain what that means?

1 A. This means that Facebook Analytics did offer more rich
2 insights to their app developers because they shared their
3 identity graph with the data that's collected.

4 Q. What is an identity graph?

5 A. This is everything that Facebook would know about a user.
6 This would be their -- you know, if they knew phone number,
7 email address, any other personal information, that they would
8 use this in conjunction with the Facebook Analytics data.

9 Q. From the period 2016 to 2024, were you at a competitive
10 disadvantage to Facebook for this reason?

11 A. Yes.

12 Q. During that time, did you consider ignoring the sWAA
13 control and competing with Facebook by identifying everyone's
14 data?

15 A. No.

16 Q. Why not?

17 A. Because that would not be consistent with users'
18 expectations on how the sWAA control works.

19 Q. Well, you could just dump the sWAA control and then
20 compete better with Facebook, couldn't you?

21 A. In theory.

22 Q. Did you consider doing that?

23 A. No.

24 Q. Have you ever heard anybody propose that, to compete
25 better with Facebook, Google should just start reidentifying

1 all of the data?

2 A. No.

3 Q. Does this remain a competitive disadvantage to this day?

4 A. Yes.

5 Q. I'd like to ask you about, at the bottom, the bullet point
6 that says [as read]:

7 "Aggregated-only reports and audiences with
8 client-side persistence."

9 Why is -- can you just explain that bullet point?

10 A. "Aggregated-only reports and audiences" refers to the
11 reports that we walked through yesterday in the video. These
12 were, like, the number of daily active users, the number of
13 events that are logged, that sort of thing.

14 "Client-side persistence," I'm going to be honest and say
15 I'm not sure what that refers to here.

16 Q. Why are aggregated-only reports and audiences a
17 competitive weakness for analytics?

18 A. Well, other tools which are more rich in sharing, like
19 Facebook, offering these, you know, identity graph insights at
20 the user level might be more appealing to businesses, but
21 that's just not something that Google Analytics was going to
22 offer.

23 Q. So Facebook is providing -- your understanding is that
24 Facebook was providing analytics customers user-level
25 reporting?

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1 A. Yes, that was my understanding. But more so that Facebook
2 Analytics was mixing their identified data with the analytics
3 users' data to enrich Facebook profiles.

4 Q. I see.

5 Now, does that competitive weakness, did that persist
6 throughout the 2016 to 2024 time period?

7 A. Yes.

8 Q. Did you consider doing it the Facebook way?

9 A. No.

10 Q. Why not?

11 A. That's -- that would be incongruous with the users'
12 expectations on how our products work, out of step with our
13 privacy policies.

14 Q. Mr. Ganem, I want to ask you, personally, would you want
15 to be the head of Google Analytics if you were ordered by
16 Google to do it the Facebook way?

17 A. I would quit.

18 Q. I want to look at Tab 9 in your binder. You were shown
19 this document just a moment ago by Mr. Boies. This is
20 Exhibit 232, and you were shown Slide Number 4. So if we could
21 just flip to that slide.

22 I just want to make sure we're all on the same page
23 because you and Mr. Boies had a back-and-forth about whether
24 that says app or not in that first subbullet.

25 Can you just -- let's take a step back and explain what's

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1 Q. So your data would be cleaner, from a privacy standpoint,
2 than analytics data from a third party?

3 A. Yes.

4 Q. What's an example of one of those third parties?

5 A. AppsFlyer.

6 Q. And did you say AppsFlyer -- where do they stand in the
7 market with respect to conversion measurement?

8 A. Clear number one.

9 Q. So let's look at -- well, let me -- just a quick question.

10 To your knowledge, does Facebook have a button like WAA
11 that allows people to opt out of the collection of identified
12 analytics data?

13 A. Not to my knowledge.

14 Q. What about Adobe?

15 A. Not to my knowledge.

16 Q. What about Crazy Egg?

17 A. I hadn't heard about Crazy Egg till yesterday, so I don't
18 know.

19 Q. Are you aware of any major analytics SDK that you compete
20 with that provides users the ability to opt out of the
21 identification of their analytics data?

22 A. No.

23 Q. Have you considered competing better with those
24 competitors by not providing the opt out that Google provides?

25 A. No.

1 Q. Have you heard anybody propose doing that?

2 A. No.

3 Q. Have you heard anyone propose abolishing SWAA so that
4 Google could make more money and have a better analytics
5 product?

6 A. No.

7 Q. Speaking of money, Mr. Ganem, you were asked yesterday
8 about the value to Google -- I think Mr. Boies began by talking
9 to you about the value to Google of analytics data. Do you
10 remember that?

11 A. Yes.

12 Q. And I think at some point he asked you about the value of
13 conversion measurement, and you guys had a bit of a
14 back-and-forth.

15 Can you just explain, in your own words, how conversion
16 measurement helps Google be a stronger business?

17 A. Yes. So conversion measurement is a report card to
18 advertisers about how well their advertising is working
19 relative to their goals. And so Google Analytics does offer
20 such a report card, but it's focused exclusively on Google Ads.

21 And these AAPs, like AppsFlyer, they offer a report card
22 across Google, Meta, TikTok, and others; and most of our
23 advertisers simultaneously advertise across all these
24 platforms. So that report card is actually more useful for
25 them than ours.

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1 will not. So it provides control and choice to the user.

2 Similarly, if we scroll down, we could see under
3 "Web & App Activity" -- and so now we see the activity controls
4 have a label "Web & App Activity." And then we are -- we learn
5 that we can control what's saved to our Google Account,
6 depending on our behavior on different sites and apps. And we
7 have another opportunity through the hyperlink at the -- which
8 is bolded, in blue, which says "Learn more," and so on.

9 And I think there's another "Learn more" a little farther
10 down. There's a toggle to turn something on. There's,
11 you know, other things you can see and delete and so on.

12 So this is a nice, I think, example, in my opinion, of
13 progressive disclosure.

14 Q. Let's go to the toggle that you just mentioned.

15 So do you see, under "Web & App Activity," there's a
16 toggle that says "Turn on"?

17 A. Yes, I see that.

18 Q. And did you hear testimony in this case about what happens
19 when a user clicks "Turn off" if it's already on and they are
20 choosing to turn that toggle off?

21 A. Yes, I heard that testimony.

22 Q. What did you hear, so the jury understands the foundation
23 of your opinion?

24 A. So I heard the testimony, but I also tested this for
25 myself and I have my own experience, and I also studied the

1 disclosures.

2 Let's imagine that Web & App Activity is on, even though
3 this board says it's off. So say it's on and then that button
4 there, that blue button, the blue font bolded button would say
5 "Turn off."

6 So what would happen when we turn that off is we get an
7 automatic pop-up. And that pop-up, I like to think of it -- in
8 user experience or user interface design, it would be called a
9 guardrail. It would be something that would pop up designed to
10 make sure that users wouldn't make a mistake or an error.

11 And so what will happen is this pop-up will show up and it
12 will explain -- and I like to think of it colloquially as "Are
13 you sure?" So the pop-up will come up and it will say, "You
14 really want to do that?" And it will explain what will happen
15 if you do that.

16 Q. So your colloquial term is "Are you sure?" Do you
17 remember what Mr. Monsees referred to that pop-up as? It was a
18 longer word.

19 A. I think, yeah, like revocation. Yeah, something jargony,
20 yes.

21 Q. Why is the timing of that pop-up, that "Are you sure"
22 button, important from a UI design perspective?

23 A. Well, the idea in general behind, you know, human-computer
24 interaction, which we know from research, and then the
25 application field is user design and user interface, is that

1 you need to provide people the information they need when they
2 need it in the context that they need it in.

3 And so in this case, if you want to turn off a button and
4 you're provided this high-level information about the controls
5 and what they might do, you would want information about the
6 impact of what will happen when you turn it off.

7 **MS. AGNOLUCCI:** Okay. Brooklyn, can you please
8 display Exhibit 574.

9 And for the record, this is the document the parties were
10 discussing this morning that we stipulated to add a page to and
11 enter into evidence. Originally, we discussed calling it
12 574.R2, and then we decided, I think with Ms. Hom, to just
13 replace 574 in its entirety.

14 And if you could go to the last page, Brooklyn, page 22.

15 **BY MS. AGNOLUCCI:**

16 **Q.** All right. Professor Hoffman, do you recognize this
17 document?

18 **A.** Yes, I recognize it.

19 **Q.** What is it?

20 **A.** This is a screenshot, I think, from -- if I'm not
21 mistaken, from 2018 to 2019. That is an example of the pop-up,
22 of what I'm calling the "Are you sure" pop-up, which is the
23 example of the guardrail, saying: Here's what's going to
24 happen if you turn this off. So we want to make sure you
25 understand so that you know what you're doing.

1 **MS. AGNOLUCCI:** Objection, Your Honor. May we have a
2 sidebar?

3 **THE COURT:** Overruled. No.
4 Go ahead.

5 **THE WITNESS:** I'm sorry. I don't think I understand
6 the question.

7 **BY MS. BONN:**

8 **Q.** Do you recall that when asked at your deposition whether
9 Google's various progressive disclosures were clear or
10 ambiguous to users, your answer was that the only way for an
11 expert in your field to know that would be to conduct a
12 consumer research survey, which you had not done?

13 **A.** I do recall that, and that is in the context of Google
14 applying what I believe to be good UI design practices.

15 But Mr. Frawley said, "Well, at the end of the day, we
16 don't really know if consumers are confused or not, do we?"

17 And I have to agree that at the end of the day, if we want
18 to know if consumers are confused, for example, we would have
19 to conduct a survey. And I had not conducted that survey. But
20 I did opine that I thought the disclosures were user-friendly.

21 **MS. BONN:** I've just got about 30 seconds, and then
22 I think we'll be done with the witness, if that's okay,
23 Your Honor, rather than bring her back tomorrow. Less than
24 a minute.

25 **THE COURT:** It's not 1:30 yet. Ask the question.

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1 MS. BONN: Perfect. Thank you.

2 BY MS. BONN:

3 Q. Ma'am, Google hired you in this case and paid you 950 to
4 1200 dollars an hour, and your expertise, in part, is in
5 conducting such user surveys; correct?

6 A. That's one of my expertise. I have a number of related
7 ex- -- you know, expertises.

8 Q. Yet, you were not asked by Google to conduct such a study
9 of whether these progressive disclosures were clear or
10 ambiguous in this case; correct?

11 A. Well, I was hired as a rebuttal witness, and the person I
12 was rebutting did not conduct a survey, and so I did not
13 conduct an affirmative survey, and nor was I asked to because I
14 was rebutting someone else's opinions who himself had not
15 conducted a survey.

16 Q. Okay. And, ma'am, you talked a little bit on your exam
17 about how everybody can have different privacy preferences;
18 correct?

19 A. Well, I said people have different privacy pref- --
20 different people have different privacy preferences.

21 Q. One thing that all of the adults in this class have in
22 common is that they revealed a preference by turning the SWAA
23 button from the default on state to off; correct?

24 A. Yes, that's my understanding.

25 MS. BONN: That's it. Thank you.